



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

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November 22, 2010

John D. Darer, CLU, ChFC, CSSC, RSP
4Structures.com, LLC
43 Harbor Drive, Unit 309
Stamford, Connecticut 06902

**Re: Life Insurance Company Guaranty Corporation of New York –
Linked-In Website as Advertising Vehicle**

Dear Mr. Darer:

I write in response to your inquiries regarding the propriety of an insurance producer's allusion to state guaranty funds in a slide show presented on a "Linked-In" profile.

Questions:

1. Does the use of a Linked-In profile page for the promotion of insurance, insurers, or insurance agents or brokers constitute an advertisement, announcement, or statement under the New York Insurance Law?
2. May a licensed insurance agent or broker who solicits structured settlement annuities speak or write about guaranty funds in general in connection with the solicitation of annuities to lawyers or their personal injury clients?
3. Is an express disclaimer in marketing materials, such as a statement to the effect that the existence of guaranty funds is not a reason to buy insurance, or a direct reference therein to the provisions of New York Insurance Law § 7718 (McKinney Supp. 2010), sufficient to allow guaranty fund references to be made in such marketing materials?
4. Is there an acceptable way under the Insurance Law for a licensed agent or broker to respond to inquiries on the subject of guaranty funds?

Conclusions:

1. Yes, the use of a Linked-In profile page or a similar website for the promotion of insurance, insurers, or insurance agents or brokers constitutes an advertisement, announcement, or statement under the New York Insurance Law.
2. No, a licensed insurance agent or broker who solicits structured settlement annuities may not properly speak or write about guaranty funds, even in general terms, in connection with the solicitation of annuities to lawyers or their personal injury clients.
3. No, the inclusion of an express disclaimer in marketing materials, such as a statement to the effect that the existence of guaranty funds is not a reason to buy insurance, or a direct reference to the provisions of Insurance Law § 7718, will not render guaranty fund references in such marketing materials acceptable.
4. Agents and brokers are advised to refer any questions about guaranty fund protection to the Insurance Department or to a licensed insurer, which may, upon a written request, provide information about the guaranty fund to policyholders by means of a form prepared by the guaranty fund and approved by the Superintendent of Insurance.

Facts:

You have informed the Department about the existence of a slide show presentation currently available on an insurance producer's Linked-In profile page. You contend that certain of these slides violate Insurance Law § 7718. The text of the relevant slides reads as follows:

SLIDE 1: State Guaranty Association**IT'S NOT A REASON TO BUY INSURANCE**

Disclaimer: In most states it is a violation of the Insurance code to use the Guaranty Association as an inducement to buy a policy. Guaranty associations are not a selling point for an insurance policy.

"Unfair Marketing Practices" No insurer or insurance intermediary may make use in any manner of the protection given policyholders by guaranty association statute as a reason for buying insurance.

SLIDE 2: What is it?

State guaranty associations provide coverage (up to the limits spelled out by state laws) for policyholders of insolvent insurers licensed to do business in the state.

When an insurer is declared insolvent the guaranty association:

1. Analyzes the commitments to policyholders.
2. Ensures that covered claims are paid.
3. May arrange for covered policies to be transferred to another insurer.

SLIDE 7: What is the average coverage limit?

Guaranty associations have maximum benefit limits. Limits vary from state to state, but most states provide at least:

- \$300,000 in life insurance death benefits
- \$100,000 in cash surrender or withdrawal values for life insurance
- \$100,000 in withdrawal and cash values for annuities
- \$ 100,000 in health insurance policy benefits

Analysis:

Article 77 of the New York Insurance Law, also known as The Life Insurance Company Guaranty Corporation of New York Act, establishes and governs the Life Insurance Company Guaranty Corporation of New York ("LICGCNY"), which is the fund that covers life insurance policies, health insurance policies, annuity contracts, funding agreements (and contracts supplemental to such policies, contracts or funding agreements) issued to a New York resident by a life insurance company licensed to transact life or health insurance or annuities in New York at the time the policy, contract or agreement was issued or at the time the insurer becomes an impaired or insolvent insurer.¹ See Insurance Law § 7703.

Your inquiries implicate Insurance Law § 7718, which prohibits insurance producers from exploiting the existence of LICGCNY as a means to promote the sale of insurance. That statute provides as follows:

No person, including an insurer, agent or affiliate of an insurer and no broker shall make, publish, disseminate, circulate or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement which uses the existence of the corporation for the purpose of sales, solicitation or inducement to purchase any form of insurance covered by this article; provided, however, that this section shall not apply to the corporation or any other entity which does not sell or solicit insurance, or to prohibit the furnishing of written information in a form prepared by the corporation and approved by the superintendent by a member insurer directly to a policyholder in response to a written request therefor. (Emphasis added.)

1. Linked-In Profile or Similar Websites as Advertising

Your first question asks whether the use of a Linked-In profile page or similar website for the promotion of insurance, insurers, or insurance agents, or brokers constitutes advertising under the New York Insurance Law. The answer to this inquiry is "yes." The language of Insurance Law § 7718 is very broadly worded, as indicated by the inclusion of the phrase "...or in any other way" in the statute. The scope of the statute is such that any means of

¹ The protection afforded by LICGCNY applies to policies and contracts issued on or after August 2, 1985. See Office of General Counsel Opinion No. 89-20 (NLS)(April 28, 1989).

communication will qualify as an advertisement, announcement or statement under the statute. This is consistent with the intent of the law, which is to prohibit allusions to LICGCNY to induce the purchase of insurance.

2. Insurance Producers' Use of General Discussions of Guaranty Funds

Your second question involves the propriety of an insurance producer speaking or writing about guaranty funds, even in general terms, in connection with the solicitation of annuities to lawyers or their personal injury clients. A similar question was addressed by an Office of General Counsel Opinion dated January 26, 2009 (the "2009 opinion"). At issue in that opinion was the propriety of a trade association brochure that included the following statement: "State insurance guaranty associations provide an additional level of protection for future structured settlement recipients."

The 2009 opinion concluded that the use of the statement was improper, despite its general nature. This conclusion was made even though no direct reference was made to LICGCNY because the making of a statement directed at New York residents, whose only guaranty fund coverage would be from LICGCNY should a life insurer fail to meet its obligations, constitutes an implied reference to LICGCNY. Therefore, in the context of marketing insurance to New York residents, even a general discussion of guaranty funds is proscribed by Insurance Law § 7718.

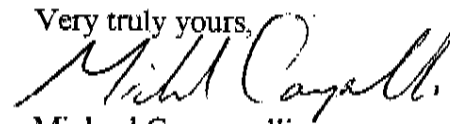
3. Use of a Disclaimer

Your third question is whether an express disclaimer in marketing materials, such as a statement to the effect that the existence of guaranty funds is not a reason to buy insurance, or a direct reference to the prohibition set forth in Insurance Law §7718, would be sufficient to allow guaranty fund references to be made in such marketing materials. To allow the use of a purported disclaimer would in fact run counter to the very purpose of the statute in that it would expressly countenance the making of a "statement which uses the existence of the corporation for the purpose of sales, solicitation or inducement to purchase any form of insurance covered..." Accordingly, an ostensibly "protective" disclaimer would not be permitted.

4. The Proper Response to Inquiries About LICGCNY

Your final question asks how insurance producers should handle inquiries about the LICGCNY. First, it is always proper to refer an inquirer to the Insurance Department. In addition, the statute itself provides that an insurer that is a member of LICGCNY may, upon a written inquiry, provide information regarding LICGCNY in a form that has been prepared by the LICGCNY and approved by the Superintendent. This refers to LICGCNY's "Policyholder Protection" brochure, which is available at LICGCNY's website at <http://www.nylifega.org/>. The brochure is also available at the Department's website at the following address: http://www.ins.state.ny.us/consumer/life/licgc_brochure.pdf.

Very truly yours,



Michael Campanelli